

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)	
Clifton Lind, et al.)	
)	
Appeal No.: 2009-004385)	
)	
Serial No.: 10/643,189)	Group Art Unit: 3714
)	
Filed: August 18, 2003)	Examiner: Binh An Duc Nguyen
)	
FOR: DYNAMICALLY CONFIGURABLE)	Confirmation No.: 3668
GAMING SYSTEM)	
)	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REQUEST FOR REHEARING

The Appellants file this Request for Rehearing pursuant to 37 C.F.R. §41.52 from the decision (the "Decision") of the Board of Patent Appeals and Interferences (the "Board") dated August 11, 2010, reversing the Examiner's rejection of claims 32, 33, 39, 40, and 42, and affirming the Examiner's rejection of claims 25-31, 34-38, and 41 in the above-identified application. Specifically, the Appellants request reconsideration of claims 25-31, 34-38, and 41 in the above-identified application. Appellants submit this Request for Rehearing within the two-month period following the date of the Decision.

PAGE NO.

I.	GROUND FOR REJECTION	1
II.	THE DECISION RELIES ON AN INCORRECT FINDING OF FACT THAT THE SIZER REFERENCE SUGGESTS DELIVERING A MESSAGE WHEN THE TARGET PERSON IS AT AN OBJECT OR LOCATION THAT MAY BE AT A DISTANCE FROM WHERE THE MACHINE IS LOCATED AND NOT NECESSARILY AT THE MACHINE ITSELF	1
III.	CONCLUSION	3

I. GROUND FOR REJECTION

The Decision affirmed the final rejection of claims 25-31, 34-38, and 41 under 35 U.S.C. §103(a) as being obvious over U.S. Patent Application Publication No. 2004/0166940 A1 by Rothschild et al. (the “Rothschild reference” or “Rothschild”) in view of U.S. Patent No. 5,923,252 to Sizer et al. (the “Sizer reference” or “Sizer”).

II. THE DECISION RELIES ON AN INCORRECT FINDING OF FACT THAT THE SIZER REFERENCE SUGGESTS DELIVERING A MESSAGE WHEN THE TARGET PERSON IS AT AN OBJECT OR LOCATION THAT MAY BE AT A DISTANCE FROM WHERE THE MACHINE IS LOCATED AND NOT NECESSARILY AT THE MACHINE ITSELF

The Decision relies on Finding of Fact 6 in stating “Sizer suggests detecting, determining and delivering when the target person is at an object or location that may be at a distance from where the machine is located and not necessarily at the machine itself.” Decision at page 8, lines 23-26 (Emphasis Added). However, Finding of Fact 6 does not include any finding that Sizer suggests delivering a message when the target person is at a distance from the message delivery machine. Sizer does not in fact disclose or suggest delivering any message when a detected person is at a distance from the message delivery device. Rather, as the following quotations indicate, Sizer repeatedly discloses that the message is delivered while the targeted person is proximate to the message delivery device, and not at some distance from the message delivery device.

“An advantage of not having the message delivered until a person is present...” Sizer at col. 4, lines 20-21.

1
2 “The device is thus only delivering a message when a person is there to receive it.” Sizer
3 at col. 5, lines 49-50.
4

5 “Note that the device is not limited to point of sales marketing and may be positioned
6 conveniently anywhere where it is desired to deliver a message.” Sizer at col. 9, line 67
7 to col. 10, line 3.
8

9 Furthermore, a common thread among all of the example applications cited in Sizer¹ is that the
10 detected target person must be in position to receive the message in order for the device to
11 present the message. After all, since Sizer is all about delivering an appropriate message to a
12 detected person, how could Sizer suggest delivering the message prior to the time at which the
13 detected person is in position proximate to the message delivery device to receive the message?
14 The Appellants respectfully submit that the answer is that Sizer does not provide any suggestion
15 or apparent reason to deliver a message before a targeted person is proximate to the message
16 delivery device to receive the message, and certainly does not provide any suggestion or apparent
17 reason to modify the presentation at a gaming machine before a targeted person arrives at the
18 gaming machine.

19 The independent claims which stand rejected each require a method or system which
20 detects a player approaching an area of a gaming facility in which a gaming machine is located
21 and switches the presentation at the gaming machine prior to the arrival of a player at the gaming
22 machine. The Decision states that the primary reference, the Rothschild reference, does not
23 disclose any structure adapted to take this action (Finding of Fact 5), and relies entirely on Sizer

1 The only example applications cited in Sizer are for marketing or advertising messages, museum or art gallery exhibition messages, and location safety messages. See Sizer at col. 5, lines 9-29.

1 for the proposition of detecting a person at some distance from a device and taking some action
2 at the device prior to the arrival of a player at the device (Decision at page 8, lines 23-26).
3 Because Sizer only discloses delivering a message to a targeted person when the targeted person
4 is in position proximate to the message delivering device to receive the message, and does not
5 disclose or suggest delivering a message prior to the time the targeted person is in position
6 proximate to the message delivering device to receive the message, the Appellants believe the
7 rejections are in error and should be reversed.

8
9 **III. CONCLUSION**

10 For all of these reasons, the Appellants submit that claims 25-31, 34-38, and 41 are not
11 obvious over Rothschild in view of Sizer and are entitled to allowance. The Appellants therefore
12 respectfully request that the Board reconsider the Decision as to claims 25-31, 34-38, and 41 and
13 reverse the Examiner's rejections as to these claims.

14 Respectfully submitted,

15 The Culbertson Group, P.C.

16
17 Date: 11 Oct. 2010

18 By: 

19 Russell D. Culbertson, Reg. No. 32,124
20 3811 Bee Cave Road, Suite 108
21 Austin, Texas 78746
22 512-327-8932
ATTORNEY FOR APPELLANTS